

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Larry Gene Martin, Jr.,)	Civil Action No. 4:08-0603-MBS
)	
Petitioner,)	
)	
v.)	ORDER AND OPINION
)	
Warden, Lieber Correctional)	
Institution,)	
)	
Respondent.)	
)	

Petitioner Larry Gene Martin, Jr., (“Petitioner”), is presently confined in the Lieber Correctional Institution of the South Carolina Department of Corrections. On February 25, 2008, Petitioner, a pro se prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner also filed an amended petition on April 15, 2008.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. The Magistrate Judge reviewed the petition pursuant to the provisions of the Rules Governing Section 2254 Proceedings for the United States District Court, the Anti-Terrorism and Effective Death Penalty Act of 1996, and applicable precedents. The Magistrate Judge filed a Report and Recommendation on April 22, 2008. The record reflects that Petitioner has a direct appeal pending in the South Carolina Court of Appeals. (Petr.’s Amnd. Memo, at 3). The record further reflects that Petitioner has not filed for state post-conviction relief. (Petr.’s Amnd. Memo, at 6). The Magistrate Judge recommended the

petition be dismissed because Petitioner has failed to meet the exhaustion requirement under § 2254(b).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. Id. The district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

Petitioner filed an objection to the Report and Recommendation on May 13, 2008, in which he continued to assert grounds for habeas relief. Petitioner failed, however, to direct the court's attention to a specific error in the Magistrate Judge's proposed findings and recommendations. Nevertheless, the court has conducted a *de novo* review of the petition and concludes that the Magistrate Judge has properly applied the applicable law.

The court adopts the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The petition is dismissed *without prejudice* as a unexhausted § 2254 claim. Respondent is not required to file a return.

IT IS SO ORDERED.

s/Margaret B. Seymour
Margaret B. Seymour
United States District Judge

December 12, 2008
Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.